British Parliament

Westminster Hall

Wednesday 17 December 2008

[Mr. Frank Cook in the Chair]

Libel Laws

Motion made, and Question proposed, That the sitting be now adjourned.-(Mark Tami.)

9.30 am

Frank Cook (in the Chair): The first topic for consideration today is the operation of the libel laws. As I have no specific knowledge of what aspects of the subject are to be put before us, I thought it advisable to refer to "Erskine May". Its advice is as follows:

> "reflections must not be cast in debate upon the conduct of the Sovereign, the heir to the throne, or other members of the royal family, the Lord Chancellor, the Governor-General of an independent territory, the Speaker, the Chairman of Ways and Means, Members of either House of Parliament of judges of the superior courts of the United Kingdom, including persons holding the position of a judge, such as circuit judges and their deputies, as well as recorders."

I am not saying that anyone will be so indiscreet as to do that. To do so, the decision must be based on a substantive motion to be placed before the House. We do not have time for that, but I am sure that everyone will bear in mind the advice that I offer. I call Mr. Denis MacShane.

Mr. Denis MacShane (Rotherham) (Lab): Thank you, Mr. Cook. Believe me, I have no intention of transgressing your wise suggestions.

I start with a short anecdote. I have just returned from Washington. With other Members of this House, I attended a meeting of the NATO Parliamentary Assembly. You, Mr. Cook, will be well aware of its workings, as you are a distinguished member of the assembly. We were invited to a reception at the Congress building on Monday night by Nancy Pelosi, the Speaker of the House and a dear friend of many of us. She took us to Congress and led me to sit in the Speaker's chair in the House of Representatives.

As a political tourist, I found that most interesting. As I sat there, I reflected on this morning's debate, because Congress is poised once again to pass a new law to protect its citizens and all who live there-but from what? To protect them from this, our country, Britain. As in the 18th century, the British establishment is seeking to silence Americans who want to reveal the truth about the murkier goings-on in our interdependent world. I speak not, I am glad to say, about the Government but about the English legal system. Lawyers and courts are conspiring to shut down the cold light of independent thinking and writing about what some of the richest and most powerful people in the world are up to.

The practice of libel tourism as it is known-the willingness of British courts to allow wealthy foreigners who do not live here to attack publications that have no connection with Britain-is now an international scandal. It shames Britain and makes a mockery of the idea that Britain is a protector of core democratic freedoms. Libel tourism sounds innocuous, but underneath the banal phrase is a major assault on freedom of information,

which in today's complex world is more necessary than ever if evil, such as the jihad ideology that led to the Mumbai massacres, is not to flourish, and if those who traffic arms, blood diamonds, drugs and money

to support Islamist extremist organisations that hide behind charitable status are not to be exposed.

I put it to the House that it is unbelievable that the state legislatures of New York and Illinois, and Congress itself, are having to pass Bills to stop British courts seeking to fine and punish American journalists and writers for publishing books and articles that may be freely read in the United States but which a British judge has decided are offensive to wealthy foreigners who can hire lawyers in Britain to persuade a British court to become a new Soviet-style organ of censorship against freedom of expression.

Richard Ottaway (Croydon, South) (Con): For a libel action to be successfully mounted in the United Kingdom, there would have to be a libel in the UK. All the laws in the world passed by the United States cannot stop that happening. Would the hon. Gentleman not agree?

Mr. MacShane: That is self-evident, but the US is seeking to protect its citizens and those who reside there who write and publish material that would not be defamatory and that would be protected by the first amendment from facing heavy fines and heavy awards of costs in British courts that would then render it impossible or dangerous for such writers to travel to Britain. That is unacceptable between the two great countries of the Euro-Atlantic alliance.

Richard Ottaway rose-

Mr. MacShane: I wonder whether the hon. Gentleman might make his speech in his own time.

It is worrying that 30 non-governmental organisations recently met human rights lawyers to express concern that libel tourists come to London to prevent the publication of NGO reports on parts of the world and individuals that, of course, rarely get much coverage in our newspapers. NGOs are an important source and conduit of information that is of interest to public policy and to the broader public, telling us what is going on and who is doing what to whom in parts of the world. These things need exposure. The NGOs are meeting lawyers because, thanks to libel tourism, some of the individuals mentioned in their reports can come here and attack those publications, seeking redress against distinguished organisations such as Human Rights Watch.

We all know that the libel laws in Britain have always been the plaything of the rich. Too many editors believe that destroying people by revealing aspects of their private lives helps sell newspapers. I shall not abuse parliamentary privilege-although, Mr. Cook, "Erskine May" does not extend the protection that you quoted to newspapermen-by describing the sexual antics and peccadilloes of newspaper proprietors, editors and journalists. [Hon. Members: "Go on!"] Well, it is Christmas and I shall not be tempted down that path.

If the editors of the Daily Mail or the News of the World, or Mr Murdoch or Lord Rothermere, ever suffered the invasion of privacy and the pestering of children and family and friends to gain tittle-tattle gossip of the sort that they inflict on others, they would be first in

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line to demand even stronger laws to protect privacy when no public interest or illegal wrong-doing was involved.

Successive Governments have shied away from reforming libel and privacy laws, for fear of upsetting media friends. Stanley Baldwin was the last Prime Minister to have the courage to denounce the bullying behaviour of newspapers and their ideological crusades masquerading as news reporting, with his famous description of our papers enjoying

> "power without responsibility-the prerogative of the harlot throughout the ages."

The Press Complaints Commission is utterly toothless, and its code of conduct is treated with contempt by the very editors who serve on it. The National Union of Journalists has a better code of conduct, but proprietors and editors refuse to co-operate with the NUJ to uphold high standards. No one wants to dictate who can or cannot be a journalist. As it is, too many decent journalists face unemployment as the economics of publishing printed media become difficult, if not impossible.

We need a small claims libel court, or the defamation equivalent of an employment tribunal for the poor and vulnerable who are traduced by the press. We need limits on what a libel court can award by way of damages.

Mr. Edward Garnier (Harborough) (Con): Is the hon. Gentleman not aware of the summary jurisdiction of the High Court in these matters?

Mr. MacShane: Yes, I am. The hon. and learned Gentleman, of course, is an adornment to the libel bar. I am sure that we will be given many insights into its operations when he speaks in his capacity as the Opposition spokesman.

There is no possibility of people securing a quick apology and redress. I believe that there should be no conditional fees except for those on modest incomes. Indeed, I would go so far as to say only those eligible for legal aid should be allowed conditional fees.

Richard Ottaway: Why?

Mr. MacShane: From a sedentary position, the hon. Gentleman asks why. Conditional fees are now being used to stack up multi-sum costs, with lawyers being completely out of control in what they charge. All that falls on the defendant if a single judge finds in favour of the plaintiff. Perhaps only one or two other countries work like that.

The object of going to court is not to make it a racket for lawyers. The object should be to obtain a correction or an apology with due prominence and not to make mammoth financial gains. A time limit should be put in place for seeking redress, so that after the passage of, say, six months or a year it would no longer be possible to sue a publication or internet site. Newspaper editors and internet comment sites and blogs also have to accept responsibility. Too much is published in too many parts of the world that breaks all the deontological rules of journalism, and too many powerful politicians

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adopt the late General de Gaulle's view that news broadcasts and television should always reflect the views of the state.

A particular problem surrounds internet blogs. Even on a well-run site, such as The Guardian comment is free site, the editors allow anonymous hate mailers to defame and insult people in a frightening manner. A simple rule might be to demand the publication of names and addresses, except where for good reason, as in a newspaper letters column, a name and address is withheld. Internet anonymity is now used too much to protect hate speech and defamatory insults.

Much of that, however, cannot be regulated in one country alone, but requires a global sense of responsibility. In the meantime, the purpose of today's debate is to stress the need for urgent action to stop London being the world centre for assaults on freedom of expression. The US Congress, where I was on Monday night, now proposes to legislate through its Free Speech Protection Act 2008, which is expressly designed to protect Americans from British courts and judges seeking to curtail freedom of expression.

The case arises from the Kafkaesque position of the writer Rachel Ehrenfeld, whose book, entitled "Funding Evil", examined the flow of money towards extremist organisations that preach the ideology of hate associated with Wahhabism and other democracy-denying aspects of fundamentalist Islamic ideology. It is not exactly a secret that a great

deal of the money that has financed fundamentalist extremist organisations that support jihad has come from Saudi Arabia. Ms Ehrenfeld's book, which was published in America, not Britain, named a Saudi billionaire called Mr. Khalid bin Mahfouz. Although the book was published in the United States, and was not on sale in any British bookshop, he found lawyers to sue in Britain. A British judge imposed a fine and costs on Ms Ehrenfeld, and said that her book should be destroyed, even though she was not in the court. No American court would have entertained such overt censorship.

The fullest examination is vital of those raising money, sometimes ostensibly for charitable work, but which ends up promoting fundamentalist ideology that scrambles young men's and boys' minds and leads them to become terrorists. There is no freedom of expression in Saudi Arabia, so it is the duty of others to expose what is happening. With the help of British libel lawyers, Mr. Mahfouz has launched 33 suits against those who are investigating this important area of public concern. Cambridge University Press was obliged to pulp its book "Alms for Jihad", written by Robert Collins and J. Millard Burr, rather than face a libel action in British courts, which seem at the moment to side with those who finance extremism rather than those who seek to curb it. The case of Mr. Nadhmi Auchi also comes to mind. What is happening when Cambridge University Press, not some odd, little, obsessive publishing house, but one of the flowers of British publishing for centuries, has to pulp a book because British courts will not uphold freedom of expression?

A Tunisian has used the British courts to sue the Dubai television network, al-Arabiya, which broadcasts in Arabic. Last November, a British judge awarded the man -L-165,000 without al-Arabiya being in court. Mr. Mohammed Sawalha attacked this summer's celebrations of the 60th anniversary of the state of

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Israel and referred to the "Jewish evil" in Britain. That was reported on the political website, Harry's place, and immediately Mr. Sawalha threatened to sue. At a time when we need the maximum examination of who is financing ideology that leads to terrorism, we find that British courts, judges and lawyers are acting in the opposite direction to silence investigations. I doubt whether any of the lawyers, the judge or court officials in question can read Arabic or have any real acquaintance with Wahhabism or Islamic fundamentalist ideology, and yet they act as defenders of those who promote extremist ideology, not those who try to expose it.

After the scandal of London being the home to many preachers of hate and militant Islamist ideology, in the 1990s and into this century, against whom the British authorities refused to move until July 2005, when the scales were lifted from some, but not all, eyes, another part of the British establishment-judges and lawyers-are protecting those accused of funding anti-democratic ideology and seeking to punish those who expose this evil. Quite rightly, American law-makers have moved to protect their citizens against such extraordinary decisions by the British legal system. Rather than allow the US Congress to pass laws to uphold freedom of speech, the House of Commons should move to outlaw libel tourism.

Moving away from ideology, the surreal nature of libel tourism can be found in the case of the Danish paper, Ekstra Bladet, which found itself being sued by the Iceland-based bank, Kaupthing, after it criticised it. Kaupthing's default has caused distress to British savers, and every Member will have a constituent who has lost money and is very concerned. The collapse and wrongdoing of Kaupthing might be about to return Iceland to a rural economy. One would have thought, therefore, that exposure of the bank's practices would have been in the widest public interest, but no. The British libel firm, Schilling and Lom-it certainly made plenty of shillings out of this case-which seems to specialise in touting for business, along with the infamous Carter-Ruck, acted for Kaupthing in London on the grounds that the articles critical of Kaupthing were available on the web. Again, one might have hoped that a British judge would have simply thrown out the case, but of course libel law is a very lucrative business for those small numbers of solicitors and barristers

who practise it.

Consideration needs to be given to the role of one particular judge. I shall not name him, because he is an honourable man, but it cannot be right that one area of law is principally in the hands of a single judge. There are not three or four judges discussing this and thereby creating a kind of common law, in which different opinions can be challenged.

I could cite further examples of rich Russian and Ukrainian oligarchs criticised in publications with no, or nugatory, circulation or presence in the UK, mainly through the web, using British courts to seek to close down or attack their critics. I am informed that there will be a ruling today about an article in TheNew York Times in a case brought by a plaintiff here in London. I do not know what the result will be, but why on earth is a British judge deciding on, or even hearing, a case against one of the world's great papers, simply because the plaintiff does not have the courage to take his case to, or knows that it would not stand up in, a New York court?

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We need to end libel tourism. It would be helpful if the Law Society investigated the behaviour of firms such as Schilling and Lom and Carter-Ruck, because actively touting for business is a serious problem. It will require legislation in our Parliament, not in the US Congress, to bring libel tourism to an end, and I welcome the Culture, Media and Sport Committee's decision to hold an investigation into libel law. However, will the Minister examine whether the draft Civil Law Reform Bill, which the House will deal with in this session, could include a small clause on libel tourism? Such a clause could assert that any action for defamation in a British court would require that the publication be based in the UK and that the plaintiff have a strong connection with the UK. The old legal doctrine of forum non conveniens needs to be asserted-people should sue in the country where the publication was issued and of which they are a citizen. Damages should not be greater than -L-10,000 and costs should have to be met by the plaintiff with conditional fees available only to those who would qualify for legal aid. Furthermore, reference to a link or some other publication would not be grounds for a libel action. Such a clause could go further and enshrine in law the so-called Reynolds ruling, which allows a defence of public interest in reporting on individuals. A plaintiff should have to prove malice and a reckless disregard for the truth, to paraphrase US defamation law. In these times when swindlers have been allowed to create their pyramids of debt, we need stronger journalism and judges who defend the public's right to know and not the lawyer's right to use the law to maximise his profit on behalf of causes that are not worthy of consideration by a British court.

I am grateful to have been awarded this debate. I will listen to comments from hon. Members and from the Opposition spokesman, the hon. and learned Member for Harborough (Mr. Garnier), who, as I said, is himself one of the adornments of the libel Bar in Britain. British citizens deserve protection against the lies and invasion of privacy that some of our newspapers indulge in, but Britain should not be a new world centre in which wealthy foreigners can seek redress against writers of publications that have little connection with our country. It is time for libel tourism to be ended, and it is better if the House of Commons and not the US Congress takes in hand the necessary reforms to stop this practice that shames our democracy.

Frank Cook (in the Chair): The protocol of 90-minute debates in this Chamber requires us to start the first of the three wind-up speeches at 10.30. That means that we have 39 minutes between now and then, and I have five individuals seeking to catch my eye. I ask those Members to bear the time limitations in mind when they make their speeches, and also when they accept or respond to interventions.

9.51 am

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Mr. Andrew Pelling (Croydon, Central) (Ind): I congratulate the right hon. Member for Rotherham (Mr. MacShane) on securing the debate. The timing is important because English PEN and Index on Censorship are conducting their own public inquiry into the conduct of libel laws. The Culture, Media and Sport Committee

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looked last year into the issue of privacy intrusion and the prospects of being able to deal with it solely through self-regulation in the media. It will also be going on specifically to consider this issue, so the debate is timely.

I should like to make some declarations of interest. I am a client of the excellent Carter-Ruck and I am currently taking recourse to the libel courts regarding issues relating to the media.

It is important that we recognise the vital role that the press plays in underpinning our liberal democracy-the way in which it endeavours to secure open government and to hold those in the public sector to account. In some ways, we need to ask why it is that the news media has to play such an important role-perhaps it is because the strength of the Executive within our political system is so strong that often Parliament is more neutered in that role compared with the media.

As 1960s' children, many of us have grown up with an awareness of the importance of the national media's role. In the US, we all remember the role that Woodward and Bernstein played in Watergate. Moreover, I remember the campaigning way in which The Sunday Times ran story after story on how the parents of children who had taken thalidomide had been so badly let down by both the drug companies and Government.

It is often said that the pen is mightier than the sword. Indeed, the pen is very mighty, which is why we have a legal system that ensures that if the media behave irresponsibly, people have recourse to the libel courts. Very often damage is done to families when kiss-and-tell stories or other revelations take place, and that damage is left behind for many years to come. Many people might well be tempted to tell their own story. Perhaps they might be offered money to tell stories, but they may all live to regret it subsequently.

However, we must be cautious about entering into a situation in which libel laws are greatly restricted, particularly when we remember that it is not necessarily Russian billionaires or those who can buy their way into protection who are affected. We just have to think about what happened to Kate and Gerry McCann. Four newspapers thought it appropriate and responsible to suggest that the McCanns had been responsible for the death of Madeleine and the disposal of her body. It is important to remember that it was the courts that brought the libel to an end, and the newspapers had to publish, on their front pages, in an unprecedented way, apologies to Kate and Gerry McCann.

I admit that I was frightened to come to this debate and to express my views about the media. One could be subjected to unbridled retribution by the media if one were to make comments about the appropriateness of libel laws. I hope that those who report my speech will quote me in full when I say that I feel strongly that it is important for Members of Parliament not to be intimidated by the press in speaking out on this issue.

I have had my own personal experience. A style of cut-and-paste journalism led to a report that suggested that when I was unwell, I had managed to work in the City, but not here. Those allegations were false. After several calls with journalists, I finally came upon a very empathetic female journalist from The Daily Telegraph who realised half way through her interview that she

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was dealing with someone who had suffered previously from mental ill health. Unfortunately, very often journalists are looking for the story and not necessarily for the full truth.

We must bear it in mind that it is often particular newspapers from a particular newspaper group that perform the worst. If we look at the number of complaints that go to the Press Complaints Commission, it is clear that one group has far more complaints made against it. We must not cast aspersions across the whole of the media as a result of the behaviour of a very limited number of journalists. I was interested to see that the book "Flat Earth News"-recommended to me by Alastair Campbell in the briefest of chats-referred to a particular newspaper group that acts with unmitigated spite to cripple reputations, and to kill ideas regardless of justice and truth.

I am very mindful of others who wish to speak, so I will bring my remarks to a conclusion after speaking briefly about the operation of conditional fee agreements, which was criticised earlier. CFAs are often wrongly described as a contingency fee agreement. There appears to be the perception that a lawyer in a successful case is entitled to a percentage of the damages won. However, the arrangement does not work in that way. If the case is lost, the lawyer gets nothing. If the case is won, the lawyer is entitled to be paid his basic charges in addition to a success fee, which is a percentage uplift on the basic charges. The winning client is entitled to seek to recover from the losing opponent his reasonable costs, which are assessed by the court if not agreed, and which may include a reasonable success fee and a reasonable after-the-event insurance premium.

Both the level of the success fee and the amount of the premium are also subject to assessment by the court if the costs cannot be agreed. Success fees are typically staggered. If a case is settled before proceedings are issued, the success fee will normally be capped at 25 per cent. It only increases to 100 per cent. if the case looks as though it will progress to trial, where the risks are much higher. The availability of ATE insurance means that if a client loses, the insurance will cover-up to a maximum of the indemnity in the original policy-the newspaper defendant's cost. It is clear that libel lawyers under CFAs act for many people who are on income support, including individuals who may well have been falsely accused of extremely serious crimes.

There is great danger in how the Government and Parliament act because, in many ways, they always take rights away from those who are in the middle of society. The idea that, somehow, only those who are on income support can have access to CFAs strikes me as being yet another blow against the lower middle class and their ability to access the courts. Complaints are made about the cost of libel courts. Unfortunately, the reality is that the cost of all courts stops many of my constituents having proper access to them to defend their rights, whatever the issue.

Several hon. Members rose-

Frank Cook (in the Chair): Order. There are 30 minutes left for Back Benchers to speak in the debate and three hon. Members are bidding to make a speech.

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10 am

Norman Lamb (North Norfolk) (LD): I congratulate the right hon. Member for Rotherham (Mr. MacShane) on securing the debate, which is on an incredibly important subject. I look forward to hearing the Minister's response to the extremely important points that were made on the phenomenon of libel tourism. The hon. Member for Croydon, Central (Mr. Pelling) also made some important points on the protection of individuals against irresponsible journalism, and I absolutely accept his concerns.

I apologise for the fact that I must leave before the end of the debate, but I have a long-standing commitment to meet. I warned you of that earlier, Mr. Cook.

I have two reasons for contributing to the debate. First, I have an interest in, and commitment to, the incredibly important principle of freedom of expression. Secondly, I have an interest in serious and responsible investigative journalism. Those two things are essential to the proper functioning of a liberal, democratic society. It is essential that journalists are able to perform that function, to root out wrongdoing, whether it is by Government officials, politicians or private individuals, and to hold Governments to account. As the right hon. Gentleman indicated, it could protect us from harm.

There are widespread concerns among journalists and others that the UK libel laws, combined with the cost of defamation litigation, act as a constraint on, and an impediment to, the effective and legitimate work of investigative journalists. Those concerns have been heightened by the application of libel law to those who contribute to the internet and those who write blogs. I have no interest in people who make wild allegations that are not supported by facts. They do not deserve the protection of the law.

I shall offer one case study-I stress that I do not know all the details or the full story-that illustrates how the threat of defamation proceedings using, primarily but not exclusively, UK libel laws may succeed in closing down legitimate inquiry and reporting. I should also stress that I do not want to use this opportunity to take advantage of the privilege that we enjoy to make fresh allegations against any individual.

The case involves Nadhmi Auchi, whom the right hon. Gentleman mentioned. He is a British citizen-an Iraqi exile-and he is reported to be a multi-billionaire. He was convicted in France in 2003 of fraud in a trial involving the oil company Elf. Importantly, he continues to assert his innocence of the charges-there was a conviction, but he is pursuing routes of appeal against it. He was barred from entering the United States in 2005. My interest in the matter is in his connections to Tony Rezco, who was convicted of fraud, money laundering and bribe-related charges in Illinois, and who is currently in prison pending sentencing. We understand that sentencing has been delayed, and it has been suggested that he should talk to federal prosecutors, especially about allegations against Illinois Governor Blagojevich, which are being investigated. There is political interest in the US because of the connections between Rezko and President-elect Obama. I make no allegation at all relating to the latter.

There have been reports that a company related to Mr. Auchi registered a loan of $3.5 million to Tony Rezko on 23 May 2005. That and other alleged connections are obviously of great interest to investigative journalists

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and others. More to the point, it is legitimate to investigate such a matter, given that Mr. Auchi is a prominent British citizen with political connections in this country and overseas. As I said, it is not appropriate to go into more detail, but it is alleged that Mr. Auchi and his lawyers, Carter-Ruck, have been making strenuous efforts to close down public debate. Of course, it is absolutely legitimate for any citizen to demand accurate and rigorous investigation and reporting. The question is whether UK libel laws have the disproportionate effect of discouraging legitimate reporting. Many believe that they do.

On 28 June, Private Eye reported Mr. Auchi's instructions to Carter-Ruck. The article states:

> "Carter-Ruck's first target was a series of revelatory articles"-

concerning Mr. Auchi-

> "printed in the Observer in 2003, which American bloggers and journalists were starting to notice."

Later, however, the article states:

"You will search in vain now, however, to find most of the Observer's reports."

Those reports were from five years ago. It has been reported in the US that Carter-Ruck has been writing to US and British newspapers and websites demanding removal of the material that it deems defamatory of its client. Many are concerned about the fact that creating a link on a blog to a newspaper article, which may have been available for several years to anyone searching the internet, can result in action being threatened or taken. Is that legitimate? Alternatively, should a blogger be able to rely on the journalistic integrity of reliable news sources when a story has already been published and when it has existed for several years?

What steps should be taken? A doctrine arising from Reynolds v. Times Newspapers Ltd and others, 1999, seeks to protect serious investigative journalists. Guidance given during that case, as I understand it, included 10 principles that investigative journalists should follow. However, subsequent cases appear not to have applied the principles as intended by the Reynolds guidance, and the protection offered to serious, investigative journalists has not been as great as had been anticipated following the judgment.

Jameel and others v. The Wall Street Journal Europe Sprl, which was heard in the House of Lords, reasserted the importance of the principles enshrined in the Reynolds judgment, and there is some evidence that courts' interpretation of the principles appears to have improved since. However, the question is whether those principles should be enshrined in statute to give them greater force and clarity. Is there also a case for looking at the burden of proof? I make no judgment about what ultimately should happen. I suggest that this is an appropriate area for consideration by a royal commission.

This is a legitimate area that needs consideration. As the right hon. Gentleman said, it is a long time since libel laws have been looked at and further consideration is long overdue.

10.10 am

Michael Gove (Surrey Heath) (Con): I congratulate the right hon. Member for Rotherham (Mr. MacShane) on securing the debate and the hon. Members for

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Croydon, Central (Mr. Pelling) and for North Norfolk (Norman Lamb) on their speeches, both of which contained much good sense.

I draw attention to my declaration in the Register of Members' Interests. As a journalist, I write for The Times and have been an executive of that newspaper as news editor. I am committed to the principle of free expression and the freedom of the press. That is not only a consequence of my professional career and vocation, but because I believe that it is only through an effective free press that the exercise and abuse of power can be monitored effectively.

While this country has the police, the courts and a system designed to track down and punish those who do wrong, the press has historically played an invaluable role in bringing such people to the attention of the courts and the police. Sometimes the press is needed to draw our attention to the failure of the authorities in the pursuit of wrongdoing, extremism or other activities that threaten the public interest. Only this week, The Times pointed out that someone who has connections to Islamist extremism that might concern us all has been employed as an adviser to the Metropolitan police's Muslim contact unit.

Not just newspapers, but other institutions that exercise a journalistic or quasi-journalistic function have exposed extremism in public life. Think-tanks such as Policy Exchange, which I used to chair, and the Centre for Social Cohesion have pointed out the extent of extremist influence-particularly but not exclusively Islamist extremist influence-in

British public life. Because of the international nature of the extremist threat, there are examples of the press being more effective than states or international institutions in exposing such dangers. An example is the work of Claudia Rosett at The Wall Street Journal in exposing the failure of the UN effectively to police sanctions against Saddam Hussein. In all those areas, free expression and a free press have been vital in exposing abuses.

The right hon. Member for Rotherham pointed out that it is of particular concern to all of us who are attached to the freedom of the press that individuals who have been alleged to have links to extremism have used British courts to close down the investigation or publication of allegations that are in the public interest. He mentioned the examples of Khalid bin Mahfouz and Mohammed Sawalha, a British resident who tries to close down legitimate investigation into extremism on the internet.

As the right hon. Gentleman and the hon. Member for North Norfolk pointed out, there is in effect a public interest defence in law for the sort of investigative journalism that I am sure we would all applaud. The Reynolds defence offers journalists and newspapers a form of qualified privilege. That is qualitatively different from the sort of privilege enjoyed in courts and by Members of Parliament because it allows newspapers the comfort that it is legitimate for them to publish allegations provided that the process followed demonstrates that the journalism they are engaged in is of high seriousness, that appropriate steps have been taken to ensure that the allegations are in the public interest and that they are being properly investigated. They do not

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subsequently have to prove justification to the same threshold required in other cases.

A problem with the Reynolds defence is that instead of being an aid to free expression, according to some it has become an obstacle to free expression. The guidance that the courts originally gave newspapers to help them publish material in the public interest has become another set of hurdles that they have to clear. The hon. Member for North Norfolk pointed out that Jameel and others v. Wall Street Journal Europe Sprl made it perfectly clear that the Reynolds defence should help, not hinder, free expression.

There has been only sporadic implementation of that defence and a misunderstanding of it in many courts. That is why at the very least it is worth exploring whether we can enshrine the principles of the Reynolds defence in statute. That would send a clear signal from Parliament to the courts that the Reynolds defence is in effect as a public interest defence that allows the publication of material that should be part of public debate, particularly when serious issues such as extremism and terrorism need to be investigated.

Dr. Evan Harris (Oxford, West and Abingdon) (LD): The hon. Gentleman has set out some components of the Reynolds defence. I believe that part of that approach of responsible journalism is to report the denial of the allegations by the accused. That is not a requirement, but I am interested to hear his view on the matter.

Michael Gove: The hon. Gentleman is right that broadly 10 principles are outlined in the Reynolds defence, one of which is the strong suggestion that an effort should be made to secure the response of the individual against whom allegations are made. It is a basic principle of good journalism that the other person's case should be heard.

I would not wish to erect those 10 principles into 10 absolute hurdles. Discretion should be exercised in the courts and any change to the law should acknowledge that. The important points are whether the material that is published is in the public interest, whether the case is urgent and important enough to justify publication and whether overall the journalists, the newspaper or the blog can demonstrate that they have done everything in their power to ascertain the truth and importance of the

allegations that are published.

On costs, the point has been made that conditional fee agreements can raise profound questions of a chilling effect on publication. Indeed, Lord Hoffman has pointed out that freedom of expression may be seriously inhibited by conditional fee agreements. The hon. Member for Croydon, Central has pointed out that they can be helpful to individuals without resources who have been defamed. I do not wish to see the end of them, but it is important that an effort is made not to perpetuate the chilling effect on publication in the ongoing review into the costs of civil judgment. In particular, small and independent newspapers, think-tanks, research groups and other organisations that are vital components of a free and rigorous culture of debate and accountability must be protected in any structure that we create.

Finally, it has been pointed out that internet publication can lead to links being created to articles that were published and brought into the public domain four or five years previously because they remain on an internet

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archive. That may be done to substantiate a point that is being made afresh. An individual who creates such a link to material that is already in the public domain can be sued. At the very least, it is questionable whether we should allow the courts to pursue an individual who in all innocence creates a link to an article that has not been the subject of a defamation action. That individual may be sued because of the desire of another to pick off a weak link who he considers to be rich pickings and a suitably unprotected victim. In those circumstances, it would be appropriate for the court to ask, "Why did you not go for the big boys first?"

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10.19 am

Richard Ottaway (Croydon, South) (Con): I join others in congratulating the right hon. Member for Rotherham (Mr. MacShane) on securing this debate. It has been a particularly high-quality debate, but the battle lines have been drawn. The right hon. Member for Rotherham and my hon. Friend the Member for Surrey Heath (Michael Gove), with their distinguished journalistic backgrounds, veer towards the freedom of expression side of the argument; my neighbour the hon. Member for Croydon, Central (Mr. Pelling) veers towards the protection of the individual, and I will come down on his side in my remarks.

I draw it to the attention of the right hon. Member for Rotherham that at the beginning, Mr. Cook, you sensibly quoted from "Erskine May", but he has called in public, in the mother of Parliaments, for an investigation of two firms of solicitors. I sincerely hope that he has something with which to back that up, because it is one of the most serious allegations that can be made against a component part of the judiciary.

Mr. MacShane: I should have declared an interest as a former president of the National Union of Journalists; I hope that all of us here declare all our interests. In my region of south Yorkshire, we have taken action against solicitors in connection with moneys and compensation paid to miners. The notion that an ordinary individual, let alone an MP in the House of Commons, cannot ask the Law Society to investigate any solicitors' firm is quite remarkable. Such outfits tout for business. They boast on their websites that they will obtain redress. The Law Society needs to take the matter into consideration.

Richard Ottaway: There is a world of difference between complaining about the activities of a firm of solicitors in conducting its business and calling on the Law Society to investigate, but I will let the matter rest there. Perhaps I should have declared at the outset my interest as a practicing solicitor, although, having had the conduct of libel actions in the past, I no longer have any libel practice.

What we have here is the clash of three conflicting rights against each other: freedom of expression, the right to privacy and the right not to be libelled. There is an important distinction to be made between the right to privacy and the right not to be libelled, or between privacy and libel. If someone engages, for example, in sadomasochistic sex in private and a newspaper publishes that fact, it is open to the people concerned to complain that their right to privacy has been breached. If someone has said, obiter, "Sadomasochistic sex is not the sort of thing I get up to," the press are quite right to say that

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that person does not have a right to privacy, because he is, in effect, being a hypocrite. If, however, someone does not engage in sadomasochistic sex but a newspaper says that he is, that is libel. There is a big difference between privacy and libel, and I hope that on another occasion we might have a debate on the right to privacy rather than on libel.

The press focus on the right to freedom of expression. My hon. Friend the Member for Surrey Heath highlighted the fact that the press have done noble service in exposing crimes. However, it is not that that people are complaining about; of course the press have a role in exposing crime, wrongdoing and hypocrisy. They are complaining about individuals' right to privacy being breached. That is where I suspect my hon. Friend and I interpret the same set of facts differently with regard to what is in the public interest. Is it in the public interest that someone who engages in a private activity on his own property should have that fact published in a newspaper or broadcast?

The right hon. Member for Rotherham discussed the publication of a New York Times article and its worries about libel laws here. The point, which relates to my intervention, is that if The New York Times is published in the United Kingdom, the newspaper must stand by its statements under the jurisdiction of UK laws. If the United States passes a law saying that that cannot happen, that will not affect what goes on here, because the United Kingdom is the jurisdiction to which any publication or statement made in the United Kingdom is subject. That applies to books as well. A book published in the United Kingdom, although it may have been written overseas, is subject to UK laws.

Mr. MacShane: It is very decent of the hon. Gentleman to give way. I do not want to eat into the former Front-Bench spokesman's time, but is he aware of the consequences of following that path of argument? The libel tourism Act that is now before two US state legislatures, and that may possibly go to Congress, will allow an American citizen to countersue in a US court and for an American court to impose damages and fines on someone who sued in a British court.

Mr. Pelling: American imperialism at its best.

Mr. MacShane: No, it is not that. It is British imperialism to think that a British court can stop the publication of a book, order it to be pulped and impose a fine on an American writer for something that has not been sold or displayed in a book shop in this country. We must understand forum non conveniens. We sue in the country where the person is principally based and where the publication is published, not in a country where a few copies may be bought.

Richard Ottaway: The right hon. Gentleman repeats points that he made in his speech. What the Americans do and how they conduct themselves in the courts is entirely a matter for them. The Front-Bench spokesman, my hon. and learned Friend the Member for Harborough (Mr. Garnier), knows far more about the libel laws than I do and will no doubt touch on that. I am making the simple point that a publication in this country is subject to UK laws.

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On the question of contingency fees, I think that they are one of the most

significant developments in the protection of the individual. Before their introduction, the only people who could run a libel action were those on legal aid and the very rich, not the middle class. I am happy to be a part of the middle class and to stand up for its values-

Mr. MacShane rose-

Richard Ottaway: The right hon. Gentleman may say nay-

Mr. MacShane: No, I actually agree with the hon. Gentleman on this.

Richard Ottaway: I congratulate the Government on introducing that measure-I think it was this Government that introduced it-because it allows the individual a chance to fight back if he feels that his privacy has been breached or that he has been libelled.

My hon. Friend the Member for Surrey Heath spoke about Lord Hoffmann's remarks on contingency fees in the House of Lords. In the same judgment, Lord Hoffmann said that the right to expression does not trump the right to privacy or the right not to be libelled, that there must be a balance and that one was not to exclude the other.

One good suggestion made by the right hon. Member for Rotherham was that of a small claims court for libel action. I had not heard that idea before today. The MP whose local newspaper has misreported him wants some little vehicle to make his point. The Press Complaints Commission still has a long way to go to establish its credibility fully on that front, so such a vehicle has some attraction. If some inquiry goes into it, as the hon. Member for North Norfolk (Norman Lamb) suggested, I hope that it will be on the agenda.

Bob Spink (Castle Point) (Ind): Is the hon. Gentleman aware that there is a form of small claims court in the pre-defamation protocol that must be gone through? Using that, I have settled out of court with a small sum: an immediate apology in the newspaper and -L-100 paid to my local church. I settled in that way with a number of newspapers that repeated a defamation almost innocently. We should use the large hammer to crack the large nut.

Richard Ottaway: I seem to be in a minority in not being subject or party to a libel action, so I do not speak with any experience. My hon. Friend-excuse me, the hon. Gentleman-makes a useful contribution. [Interruption.] He is now an ex-Friend, but he is still a personal friend.

The media in this country are tremendous. They play an important role. They are, of course, self-appointed and self-selecting, but their contribution to British society is none the less paramount. However, they must realise that at times, some elements of the media can behave irresponsibly. The libel laws exist to protect the citizens of this country, and those laws should not be eroded.

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10.29 am

Dr. Evan Harris (Oxford, West and Abingdon) (LD): I should also start by declaring interests, in that I have also had to seek recourse to talk to lawyers and indeed pay them in relation to a media attack. However, I did so with a heavy heart and the matter has not yet gone any further into court. That is because I think that there is a real challenge in this country at the moment in respect of threats to free speech. I do not think that that particular right-the right to free expression-receives enough protection in the law or by the police.

My record on this issue personally is one of campaigning generally for more freedom of expression, for example in respect of the abolition of the law on blasphemy. I did not have the opportunity to check if hon. Members who are arguing for free speech in respect of the press voted the right way on all the votes that we had on the abolition of that law, but I certainly welcome the fact that we no longer have it. Indeed, I played a part in defeating the Government's original proposals on religious hatred,

which were a real threat to free expression.

There is also an issue in respect of overuse of section 5 of the Public Order Act 1986, both in terms of its scope and the way that the police actually police it. What we are dealing with now is another area where there needs to be some work done, and I speak on behalf of my party in this respect.

It is important to pay tribute to organisations that are not necessarily sponsoring this debate but are sponsoring calls for a review of the libel laws, such as PEN, the writers' organisation that has done so much work in campaigning for the civil rights and human rights of writers abroad and indeed for the freedom to author in this country, and Index on Censorship. There is also Article 19, the organisation that is 20 years old this year, which has a fantastic record abroad more than here in seeking to ensure that there is freedom of expression.

One of the questions that needs to be asked, as well as the questions about the libel laws, is whether or not the Government are concerned about other issues that affect the ability of the press and others to speak freely. There is a proposal for a defamation of religion provision at the UN and there is a law against holocaust denial, which emanates from the EU. It is an outrageous thing to deny the holocaust, but I do not think that we should criminalise being wrong.

Also, we have a law in this country on criminal defamation, which relates to this debate. So I would be interested to know if the Government can explain what their proposals are on this issue, because in answer to a question from Lord Lester of Herne Hill on 13 May 2008 about whether or not they planned to abolish the common law offence of criminal libel, the Government said:

> "We plan to seek views on the possible abolition of criminal libel in respect of defamatory material as part of a wider consultation on certain other aspects of defamation law. We hope to publish a consultation paper later in the year."-[Official Report, House of Lords, 13 May 2008; Vol. 701, c. WA120.]

We are coming to the end of the year now and it would be very helpful if the Minister said where that consultation paper is now and whether or not it is going to be forthcoming.

Of course, we also have an offence in this country of seditious libel. It is never used, but it is allowed by other

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countries to justify their having it and using that law to hold people down and repress them in terms of what they can say.

I do not think that there is any doubt that there is a problem in this country, not just in respect of the way that libel laws work and the problem of libel tourism, but the fact that there is now a chilling effect from this matter. So it is not only the cases that come to court that should concern us and the judgments therein, or the sort of people who are coming to court, but the fact that this matter is now known, it is out there and there must be some restraint being placed on authorship. That sort of restraint, and that chilling effect, is something that we must take into account and regret almost as much as the problems that exist.

As hon. Members have already said in what has been an excellent debate-I do not have time to try to respond to all the points that have been made, nor would it be appropriate for me to do so-it is important to distinguish the problem of libel from the allegation of a problem of privacy law. That is because I think that in this area Paul Dacre, the editor-in-chief of The Daily Mail, was wrong. Ever since we signed up to the European convention on human rights, judges have had to balance article 8 with article 10 and I think that the emerging case law does that appropriately. I also think that Mr. Justice Eady has done it appropriately and if it is claimed that he did not do it appropriately, there is, of course, the

right of appeal to the Court of Appeal and to the Law Lords. In particular, my view of the Moseley judgment, having read it, is that it was mature, detailed, balanced and reasonable, and we should separate out that issue-the privacy law-from concerns that the media have about the libel law.

There are several questions raised by the libel law. Is the burden of proof correct? Is it right that the defendant has to prove that a claim is true rather than the claimant having to prove that it is false, and are there sufficient defences? A second question is what should we do about internet sites and internet service providers and about issues related to jurisdiction?

I think that it is appropriate to respond to the interesting, excellent and typically provocative speech by the right hon. Member for Rotherham (Mr. MacShane) who introduced the debate. There is also an interesting issue about a small claims libel court and perhaps that is something that should be pursued. In respect of conditional fee agreements being restricted only to people who are qualified for legal aid, I think that that would be too restrictive. That suggestion is more a comment on how restrictive it is to obtain access to legal aid; one does not have to be in any way wealthy or well off not to qualify.

I would refer the right hon. Member for Rotherham and other hon. Members to the excellent report of the Constitutional Affairs Committee-its third report of the 2005-06 Session-that covered some of the issues that have been discussed today around CFAs. The right hon. Member questioned if there should be more of a time limit; my understanding is that there was a time limit on libel actions.

Mr. Pelling: One year.

Dr. Harris: Indeed; the hon. Gentleman tells me that the time limit is one year.

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There is a further point about what we should do about blogs. I am not sure that it is possible to ban anonymity on blogs, because that would just encourage people to give false or incomplete names and addresses, so we must have a more holistic solution to that problem.

Bob Spink: The hon. Gentleman is asking what we should do about internet defamation and blogs. Would it be so difficult, in fact, to prevent anonymity? Where newspapers set up sites so that readers can make comments, they never force readers to give their true e-mail addresses, although newspapers would be able to do that; they would be able to force readers to give their true e-mail addresses. Would that not be a jolly good start, to ensure that people who wanted to say something had to identify themselves, either through their e-mail address or some other means, rather than just putting "Mickey Mouse" and saying some rather stupid and awful things, as they do?

Dr. Harris: It would be possible, but of course it is also possible to set up a temporary hotmail e-mail account, for example, so that would not be the overall solution.

The right hon. Member for Rotherham also questioned whether law firms were behaving appropriately. I am not sure about that issue. To a certain extent, I agree with the hon. Member for Croydon, North on this issue-sorry, the hon. Member for Croydon, Central.

Richard Ottaway (Croydon, South) (Con): Croydon, South.

Dr. Harris: I will get there in the end, as I head down through Croydon, which is a fascinating place, I am sure.

As I was saying, I am not sure that attacking law firms for touting for business is appropriate. Clearly, it is not an offence to tout for business, nor is it wrong or an offence to invite the Law Society to

inquire. However, I think that that suggestion is probably a red herring. We need to deal with the law rather than the practice of solicitors.

In respect of some of the issues that we face, it is important to recognise just how absurd the problem of libel tourism is. The Economist, in an excellent article in May, gave the example of a Ukrainian case, where a small Ukrainian newspaper, which had only a handful of subscribers in this country-perhaps only a double-digit number of subscribers in this country-was sued in this country by a very wealthy Ukrainian. The article continued:

"Even more striking was a second victory won"-

that is, won by the gentleman concerned-

"against...an internet news site that does not even publish in English."

That is a sign that things are indeed going too far.

There is also the question of the scope of Reynolds. I agree with the hon. Member for Surrey Heath (Michael Gove) who said that it was important that the Reynolds tests must be seen as a whole and not as individual hurdles. In particular, we should be encouraged by the fact that the Jameel case made that clear in the House of Lords. I hope that the development of that case law will be helpful. I am sceptical as to whether or not it provides a permanent solution, because although that

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case law is developing we still have the problem of people coming to sue here. Maybe the Rome II provisions emanating from the European Union will give protection to internet service providers, but I think that the Government have a task to reassure not just newspapers but bloggers and other individuals in this country that they are appraised of the problem and that they will either give Parliament an opportunity to debate this issue and even legislate on it or have some sort of review to deal with this problem, further than the Culture, Media and Sport Committee inquiry that has just been announced.

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10.40 am

Mr. Edward Garnier (Harborough) (Con): Before I declare a number of interests, let me deal with the Rome II point that the hon. Member for Oxford, West and Abingdon (Dr. Harris) made. That deals with the choice of law, rather than the venue or forum. The Brussels regulation that is now being called the judgment regulation is what we need to concentrate on, as it provides a claimant with the right to sue the defendant in the defendant's jurisdiction. Under the regulation, if the BBC broadcasts something defamatory of someone in Jeddah, to pick a place at random, that citizen from Saudi Arabia is entitled to bring an action within that jurisdiction even if he has no other connection with it. The regulation modifies, to some extent, the forum non conveniens common-law argument that the right hon. Member for Rotherham (Mr. MacShane) mentioned.

Dr. Harris: I accept what the hon. and learned Gentleman says, but my understanding of the Rome II proposal is that the legislation would be specific to where the damage was done. That might be important, because if the damage was done in a country other than the UK, it would mean that even if the UK courts were entitled to hear the case, they would have to do so in reference to the law of that land.

Mr. Garnier: That is right, but the problem that we face with Rome II-I do not want to get diverted down this line, but it is partly my fault for mentioning this subject-is that the media cannot agree on its application. If they could get their house in order internationally, perhaps we could make some progress.

As has been mentioned, Mr. Cook, I am a member of the defamation bar, and

I have earned my living and paid my mortgage thanks to claimants and media organisations, some of which are represented by right hon. and hon. Members in the Chamber. I have made no value judgments between the rights and attractiveness of my clients, be they defendants or claimants. I have simply given such advice as I was capable of giving. I have won and lost cases, and I have had satisfied and deeply dissatisfied clients in my 35 years at the bar. I am also a recorder, so I presume that I shall be protected by "Erskine May" if people start hurling abuse at me.

This is too big a subject to deal with in eight minutes, but I want to draw out some threads of the right hon. Member for Rotherham's speech that were replicated by my hon. Friend the Member for Surrey Heath (Michael Gove) and the absent hon. Member for North Norfolk (Norman Lamb). The right hon. Gentleman might have

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assisted us by declaring that beyond being a member of the National Union of Journalists and a former officer of it, he was also a paid contributor to a number of newspapers. That fact is set out in the register of interests, but it is appropriate that hon. Members present should not miss out on it.

The right hon. Gentleman drew out certain themes perfectly fairly, but some of his arguments were spoiled by a slightly waspish personal attack on individual solicitors firms and, by implication, on Mr. Justice Eady, whom, I am happy to say, the hon. Member for Oxford, West and Abingdon defended. He is a friend of mine-we used to share a room in chambers-and an extremely bright, careful and sensitive man. It is a pity, when he does no more than apply the law, that he is subjected to personal attacks in this Chamber and elsewhere. Judges cannot answer back, and I hope that when we discuss issues to do with the application and implementation of the law, we can leave aside personalities and deal with the relevant principles.

The principles that the right hon. Gentleman discussed, about libel tourism and the extension into statute of the Reynolds defence, are perfectly reasonable arguments to have. These decisions ought to be made by Parliament, because once the courts reach a certain stage, they cannot develop the law further, and it is up to us, in Parliament, to do that. If the United States Congress or the other US state legislatures that he mentioned wish to limit the ambit of their jurisdiction, or to extend it, that is up to them, but, as my hon. Friend the Member for Croydon, South (Richard Ottaway) said, a US law does not impinge on the jurisdiction of the English courts. If a judge issues an order that a book should be pulped, although I have never heard of such an order, it would apply only to the books that happened to be within that court's jurisdiction. I do not think that we are going to see British judges ordering the pulping of books in California or New York. I would certainly be surprised if that happened.

It is fair to point out that there has been a rash of foreigners coming to our country and making use of our libel laws regarding quite small publications-for example, if three, four, five or six issues of a foreign newspaper were published here. In order to do that, however, they had to demonstrate some connection with this jurisdiction, otherwise the common law would not have permitted them to do so. The decisions that permitted them to sue in this country in relation to small numbers of publications were always appealable, but in many cases they were not appealed. Indeed, Mr. Justice Eady's decision in the Ehrenfeld case that has been mentioned was a default judgment, which means that the defendant, Ehrenfeld, did not appear, through either lawyer or letter, to raise any objection to the jurisdictional point or any other. The damages that were awarded in that case were within the summary limits, and there was no fine.

I do not intend to repeat the libels in any of the cases that have been mentioned. Neither do I think it appropriate to defame firms of lawyers-I confess that I have been instructed by both of the firms who have been defamed this morning-who are doing no more than their trade, which is to advise clients on the law of England and to enable them to gain access to

the courts.

Mr. MacShane: Will the hon. and learned Gentleman give way?

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Mr. Garnier: Will the right hon. Gentleman excuse me, because I have got to-

Mr. MacShane: He has just accused me of defaming somebody. That is a serious accusation.

Frank Cook (in the Chair): Order.

Mr. MacShane: On a point of order, Mr. Cook. Is it in order for an hon. Member to accuse another right hon. Member of defamation?

Frank Cook (in the Chair): On that point of order, I heard no explicit accusation of defamation.

Mr. Garnier: If the right hon. Gentleman is upset about something, perhaps we could discuss it outside-then we can get on with the debate in here.

Some serious points have been made about internet libel. There have been calls from the judiciary and from practitioners for an international instrument to deal with it. If the current British Government or any future one, encouraged by Parliament, wished to enter any such international agreement, we could get on with negotiating it, but we should not complain when judges apply the law as it stands.

On the Reynolds defence, yes, it was an advance on what previously existed, but the House of Lords did not go as far as the New York jurisdiction and other US jurisdictions on public interest defences. If we want to do something about that, we should do so, rather than whingeing about it. We could do something in Parliament, perhaps by persuading the Government to introduce a law. It is strange that we have within our power, allegedly, the ability to influence Government, but that all we do instead is be rude-if I may use that expression-about lawyers who are applying the current law and about judges who are implementing it. If we are big enough and grown-up enough to praise, as we rightly do, the freedom of the press and the ability of journalists properly to investigate those who need investigation and to expose their inequities, we should also be big enough to admit that it is our fault if we do nothing.

Over the years, we have had any number of inquiries, Government and otherwise, into the state of privacy laws and the relationship between the citizen and the fourth estate, but we have done nothing about it, because we lack the bravery and the political will to influence the press through legislation. We should either do it and get on with it, or stop whingeing and allow the judges and lawyers to do the job that they are perfectly lawfully entitled to do.

I was prevented in 1995 from sitting on the Committee that scrutinised the Defamation Bill, later the Defamation Act 1996, on the basis that I would talk too much and because I knew too-well, too little, actually. That is what the deputy Chief Whip told me at the time. I have learned a lot in the past 35 years about human nature, the desire of newspapers to do their job and the harm that is inflicted on individuals when the newspapers sometimes get it wrong. There is a balance to be found, and it is up to us as parliamentarians to engineer such a balance.

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10.50 am

The Parliamentary Under-Secretary of State for Justice (Bridget Prentice): Thank you, Mr. Cook, for your wise advice at the beginning of the debate. I might as well begin by declaring an interest: I am not a lawyer, I am not a journalist and I am not dealing with any libel procedure in the

courts at the moment-thank heavens. I hope that during the course of today's debate, I do not end up in that position either.

First, I congratulate my right hon. Friend the Member for Rotherham (Mr. MacShane) on securing the debate and on jetting in from the United States to open it today. It is, as the hon. and learned Member for Harborough (Mr. Garnier) said, a very complicated, complex and important topic. Clearly, from this morning's contributions, it is one on which very strong views are held, and I shall very much take on board some of the ideas that people have put forward. However, I must emphasise that this Government firmly support the right to freedom of expression and its protections under article 10 of the European convention on human rights. Freedom of expression and a press that is free from state intervention are a fundamental part of our democracy and our way of life in the United Kingdom, so the hon. and learned Gentleman, who talked about getting the right balance, is absolutely correct: there is always the need to ensure that we have a balanced response.

We believe that we have demonstrated our commitment to freedom of expression by including specific provisions in section 12 of the Human Rights Act 1998, requiring the courts to have particular regard to the convention's right on freedom of expression when deciding any case brought under the Act which might affect that right. But, of course, article 10 rights are not absolute. The exercise of the right carries with it duties and responsibilities, and it may therefore be subject to restrictions provided by law-for example, the interests of public safety, the prevention of crime, or, the protection of the reputations or rights of others, which is particularly relevant to today's debate.

In that context, it is important that people have an effective right to redress through the civil law when their reputation has been damaged as a result of the publication of defamatory material. The determination of individual cases is a matter for the courts, and, in each case that arises, the courts must strike an appropriate balance between the competing interests of the parties based on the circumstances of the case. It is important to emphasise that point, because, during today's debate, there have been occasions when it may have been lost in the heat of the argument.

In the short time that I have, I shall respond to some of the issues that Members have raised. The hon. Member for North Norfolk (Norman Lamb) talked about investigative journalism and its importance, and, were he still here, I would tell him that, for example, my Department only yesterday announced plans to increase the media's right to report family proceedings cases. The Government are showing that they are committed to the openness and transparency that people want.

I regularly read with great pleasure in The Times the articles by the hon. Member for Surrey Heath (Michael Gove). They are well written and full of enjoyment, at least from my perspective when reading them, and I shall take on board his questions about the Reynolds

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defence. If, after consideration, there is a suitable piece of legislation and we feel that the defence needs to be put in statute, and I am not saying that we do, I shall certainly look at the issue again.

The civil law on defamation currently provides a range of defences. The hon. Member for Oxford, West and Abingdon (Dr. Harris) was concerned about whether there were sufficient defences, but there are a range of defences: justification, whereby the material is true; fair comment-whether the statements are matters of public interest; absolute privilege, which guarantees immunity from liability in situations such as parliamentary and court proceedings; and qualified privilege.In the case of secondary publishers, the defendant would not be liable where he or she is not the author, editor or publisher of the statement complained of; had taken reasonable care in relation to its publication; and did not know, and had no reason to believe, that what he or she did caused or contributed to the publication of a defamatory statement.

In addition, section 2 of the 1996 Act provides a procedure by which a defendant can make an offer of amends to enable a valid claim to be settled cheaply and quickly without the need for court proceedings. The hon. Member for-

Bob Spink: Castle Point-

Bridget Prentice: The hon. Member for Castle Point (Bob Spink) referred to that. I beg his pardon.

My right hon. Friend the Member for Rotherham expressed concern about several aspects of current law and procedure. He described "libel tourism", whereby someone with a tenuous connection to this country uses our courts to bring defamation proceedings. Let me explain in further detail-along the lines that the hon. and learned Member for Harborough took-how the jurisdiction of our courts works. If a court in this country is to hear a defamation case, it must have a ground of jurisdiction, and the rules on jurisdiction vary depending on whether the case is covered by European Community legislation. If it is, as the hon. and learned Gentleman said, the Brussels I regulation provides European-wide rules on jurisdiction in defamation matters. When Brussels I applies, particularly in cases whereby a defendant is domiciled in a member state, it will have precedence over national law, and English courts do not have a capacity to refuse jurisdiction or even to stay proceedings under Brussels I.

Two particular provisions of the regulation are relevant to the debate. The first is article 2, which lays down a

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general rule that persons domiciled in a member state may be sued in that state. The second relevant provision is article 5(3), which provides an additional rule of jurisdiction for torts, on which the claimant can rely in place of article 2. Article 5(3) allows claimants to sue in the courts of the place where the harmful event occurred, leaving to the laws of the member states the definition of what constitutes a harmful event. Under English law, the harmful event is publication, which is defined as the communication that constitutes the defamation.

I shall briefly turn to the question of the internet. We hope to publish a consultation as soon as possible.

Mr. Garnier: If the Government are proposing to look at the issue of conditional fee agreements, as I think they are, will the Minister ensure that any changes to them permit equality of arms? There are some very rich newspaper organisations that use their financial might to prevent impoverished people from getting to court, but equally, if CFAs are being abused, there needs to be that balance-that equality of arms.

Bridget Prentice: I take very seriously what the hon. and learned Gentleman says, and I agree. We will publish as soon as possible in the new year a consultation paper on defamation and the internet, and later, as part of the proposed consultation, we will also seek views on the abolition of criminal libel in respect of defamatory material. On the issue of conditional fee agreements, some important points have been made about opportunities for people with very little means, and we are therefore very keen to ensure that the current situation continues. We are also concerned about the disproportionate cost of defamation proceedings, we are considering whether additional measures might be necessary to control those costs, and we will consult on that shortly.

My right hon. Friend the Member for Rotherham mentioned the possible use of small claims procedures. We have had a look at that idea, and we think that, because defamation can be complex, the small claims court may not be the most appropriate place for such procedures, so I am not convinced that that is the right way forward. However, we will look at whether civil law reform might be necessary, although I must say that I am not yet convinced. If it is, however, we will certainly look at the issue. Frank Cook (in the Chair): Order. We must respond to the constraints of time and

move on. [Interruption.] Will Members please conduct their conversations outside the Chamber?